



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1998

Mr. Michael R. Hull  
Assistant County Attorney  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-8974

OR98-2594

Dear Mr. Hull:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, (the "Act") chapter 552 of the Government Code. Your request was assigned ID# 119160 and ID# 119510.

The Harris County Community Supervision and Corrections Department (the "department") received two requests for the same information. The first was a request for a copy of all court policies for all felony and misdemeanor courts.<sup>1</sup> The second was a request for the following information:

District Court policy directives filed with your office reflecting any variation among district courts as to different treatment of individual cases where technical violations of probation are alleged to have occurred.<sup>2</sup>

You claim that the requested information is excepted from disclosure as records of the judiciary. The judiciary is specifically excluded from the Act. Gov't Code § 552.003(1)(B). In the alternative, you urge that the requested information is protected from disclosure by section 552.108 of the Government Code, excepting information used in law enforcement. We have considered your arguments and reviewed the submitted information. Code Crim. Proc. art. 42.12 provides in part:

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<sup>1</sup>You state that you have provided to the requestor additional requested information in the form of a list of all sex offenders currently on either felony or deferred probation. This information is made public by statute. Code Crim. Proc. art. 62.08

<sup>2</sup>You state that you have released or will release as soon as possible to the requestor three items of requested information and that a fourth item of requested information does not exist.

Sec. 1. It is the purpose of this article to place wholly within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas.

By statute, the function of the community supervision of defendants is the responsibility of the judiciary. *See also* Gov't. Code § 76.002(a) and (b). In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), the court explained the purpose of the judiciary exception as follows:

The judiciary exception [of the Act] . . . is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

*Id.* at 152. The court in *Benavides* reasoned that an analysis of the judiciary exception should focus on the function of the governmental body itself and the kind of information requested. *Id.* at 151; *see* Open Records Decision No. 572 (1990).

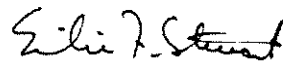
Based on the same analysis, the court in *Delcourt v. Silverman*, 919 S.W.2d 777 (Tex. App.--Houston [14th Dist.] 1996, writ denied), held that a guardian ad litem in a child custody case was entitled to absolute judicial immunity. In reaching this conclusion, the court considered the function of the guardian ad litem. When the guardian ad litem functions as an extension or arm of the court, the ad litem is entitled to judicial immunity. *Delcourt*, 919 S.W.2d at 784, 785.

You state that the department is under the control of the judiciary, that through the courts' policies the department is directed to handle individuals who are subject to the courts' jurisdiction. You also state that the department reports to the courts on these individuals' activities and refers these individuals to the courts for action. Based on your representations concerning the department's function, the purpose and use of the requested information, and the provisions of Code of Criminal Procedure art. 42.12 and Government Code section 76.002, we conclude that the department is acting "as an arm of the court." *See Delcourt*, 919 S.W.2d at 781; Open Records Decision No. 646 (1996) at 3. ("The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act"). Therefore, the requested records are not subject to the

provisions of chapter 552 of the Government Code.<sup>3</sup> Having decided that the information is not subject to the act, we will not reach the issue of whether the records are protected from disclosure as records used for law enforcement under Sec. 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS/nc

Ref.: ID# 119160 and ID#119510

Enclosures: Submitted documents

cc: Mr. Andy Kahan  
Crime Victims Assistance Director  
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P.O. Box 1562  
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(w/o enclosures)

cc: Mr. David A. Jones  
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<sup>3</sup>We note that records of the judiciary may nevertheless be available for public inspection under other statutory or common-law rights of inspection. *See, e.g., Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.--Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy judicial records subject to court's inherent power to control public access to its records); Attorney General Opinion DM-166 (1992); Open Records Decision No. 25 (1974).